

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re : Chapter 11  
Case Nos. 00-41065  
: through 00-41188  
RANDALL'S ISLAND FAMILY GOLF (SMB)  
CENTERS, INC., : (Jointly Administered)  
Debtor. : **AFFIDAVIT**  
-----X

STATE OF TEXAS )  
 ) ss.  
COUNTY OF DALLAS)

**HENRY BOMAR**, being duly sworn, deposes and says:

1. I am a portfolio manager for ORIX Real Estate Capital Markets, LLC, servicer for ORIX USA Corporation ("ORIX"). I make this affidavit upon my own knowledge and upon my review of the books and records of ORIX concerning the Mortgage (as defined below). I submit this affidavit in opposition to the motion made by Debtor to sell property owned by Debtor known as the Hiland Family Golf Center and identified by Debtor as Site No. NY33 (the "Property"), free and clear of all liens and encumbrances, including the Mortgage.

2. As set forth more fully in the accompanying Affidavit of Kenneth S. Yudell, sworn to July 26, 2000, ORIX opposes Debtor's motion on the basis that it fails to comply with 11 U.S.C. ' ' 363(f) and 363(k) because, among other reasons, the motion (i) fails to permit ORIX to credit bid at the auction in an amount equal to the outstanding balance of the Note and Mortgage, and (ii) fails to satisfy any of the conditions for such a sale under 11 U.S.C. ' 363(f) since (a) ORIX does not consent to the sale and (b) the proposed sale procedures do not require a minimum bid sufficient to satisfy the entire outstanding balance on the Mortgage.

**The Loan Documents**

3. On or about May 15, 1995, debtor Family Golf Centers, Inc. ("Borrower") signed a certain document entitled "Purchase Money Note" (the "Note"), pursuant to which Borrower promised to pay to ORIX the principal amount of \$3,000,000, plus interest and other charges in accordance with the terms of the Note.

4. A true and complete copy of the Note is annexed hereto as Exhibit A.

5. The Note provides for a variable interest rate, with the interest recalculated on the first of each month. The current interest rate is 10.1875% *per annum* and is due to be recalculated on August 1, 2000.

6. As security for payment of all amounts due under the Note, on or about May 15, 1995, Borrower executed and delivered to ORIX a document entitled "Mortgage and Security Agreement" (the "Mortgage").

7. A true and complete copy of the Mortgage is annexed hereto as Exhibit B.

8. The Mortgage was duly recorded in the office of the Clerk of the County of Warren on May 17, 1995, in Vol 1045, at page 43, *et seq.*

9. Any applicable recording tax was paid at the time of recording of the Mortgage.

10. Pursuant to the Mortgage, Borrower mortgaged real property located at and known as Hiland Golf Club, City of Queensbury, County of Warren, State of New York, and designated as Section 46, Block 1, Lot 5 and a portion of Lot 4 on the Warren County Tax Map.

11. As further security for payment of all amounts due under the Note, Borrower executed and delivered to ORIX a document entitled "Assignment of Agreements and

Security Agreement", pursuant to which Borrower pledged to ORIX of the Collateral, as defined therein.

12. Pursuant to Section 3.01 of the Mortgage, Borrower promised to pay all amounts due under the Note and Mortgage.

13. Pursuant to Section 3.23(b) of the Mortgage, Borrower promised to pay all costs and expenses "including, without limitation, attorneys' fees and disbursements [and] charges for appraisals" incurred by ORIX in connection with maintaining the Mortgage and protecting the Mortgage lien.

14. Pursuant to Section 3.23(b), all such costs and expenses are secured by the Mortgage.

**The Amount Due on the Note and Mortgage**

15. On the date Borrower filed its bankruptcy petition, May 4, 2000, there was due and owing ORIX on the Note and Mortgage a total of \$2,725,136.20, consisting of \$2,712,000 in principal and \$13,136.25 in interest.

16. In addition to the foregoing amounts, ORIX has incurred costs and expenses post-petition of \$31,512.91, consisting of \$21,862.45 in legal fees and disbursements (through June 30, 2000), \$9,000 for an appraisal, and other costs and expenses of \$650.46.

17. Post-petition interest has been paid from the date of the petition through June 30, 2000. Post-petition interest continues to accrue on the outstanding principal balance of the Note and Mortgage at the rate of \$767.46 *per diem* from July 1, 2000. As of July 26, 2000, there is \$19,186.46 outstanding for post-petition interest.

18. Accordingly, there is a total balance due as of July 26, 2000 of \$2,775,835.62, calculated as follows:

Principal	\$2,712,000.00
Pre-Petition Interest	13,136.25
Post-Petition Interest	19,186.46
Costs and Expenses	<u>31,512.91</u>
TOTAL DUE:	\$2,775,835.62

19. Simultaneously with the filing of this Affidavit, ORIX is filing a proof of claim in the amount set forth herein. A true and complete copy of the ORIX's proof of claim (without exhibits) is annexed hereto as Exhibit C.

20. Borrower has made the monthly payments due pursuant to the Note and Mortgage for almost five (5) years. Further, Borrower was sent monthly statement each month containing, among other things, the principal balance of the Note and Mortgage. Copies of the last two monthly statements sent to Borrower prepetition are annexed hereto as Exhibit D. Borrower has never objected to the validity of the Note or Mortgage, challenged the amount set forth in the monthly statements or contested the enforceability thereof.

**WHEREFORE**, it is respectfully requested that the Court grant ORIX the relief requested herein and in the accompanying Yudell Affidavit.

s/\_\_\_\_\_  
HENRY BOMAR

Sworn to before me this  
27<sup>th</sup> day of July, 2000.

s/\_\_\_\_\_  
Notary Public